

COOPER, WHITE & COOPER LLP

A LIMITED LIABILITY
PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS
FACSIMILE (415) 433-5530
WWW.CWCLAW.COM

ATTORNEYS AT LAW
201 CALIFORNIA STREET SEVENTEENTH FLOOR
SAN FRANCISCO CALIFORNIA 94111
(415) 433-1900

CONTRA COSTA OFFICE
1333 N CALIFORNIA BLVD
WALNUT CREEK
CALIFORNIA 94596
(925) 935-0700

August 2, 2007

Ms. Kathleen Vasquez
Manager – UCC Division
Office of the California Secretary of State
1500 11th Street, 2nd Floor
Sacramento, CA 95814

RE: **Bogus UCC Filings**

Dear Ms. Vasquez:

As co-chair of the Uniform Commercial Code Committee (the “UCC Committee”) of the Business Law Section of the California State Bar I am responding to your request that the UCC Committee review the *Final Report and Recommendations for the National Association of Secretaries of State (NASS) and International Association of Commercial Administrators (IACA)* (the “Final Report”), which includes a proposed statute intended to address the problem of unauthorized filing of financing statements.

In connection with our review of the Final Report, we have researched remedies available to address this problem under existing California law. Based on our research, we conclude that the remedies available under existing law are adequate to respond to the problem. If any change is necessary, the public would be better served by clarifying amendments to the existing statutes, discussed below. Adoption of the proposed statute is unnecessary. Moreover, the procedures contained in the proposed statute are not integrated into California’s statutory scheme and would require significant changes. Finally, the proposed statute is potentially harmful because it is overly broad and ignores important distinctions already recognized in California between potential users of the filing system.

For your convenience we include appendices that contain the provisions of California laws discussed in this letter.

Context of the Problem:

It is crucial to a sound consideration of the asserted problem and proposed solutions to understand what the filing of a financing statement does and does not do. While a UCC financing statement plays an important role in the priorities regime of Division 9 (of concern to competing creditors), as far as the debtor is concerned, it is simply a warning flag that informs searchers of the possible existence of a security interest in personal property in which the debtor may or may not then or at some time in the future have an interest. It states the name and

address of a debtor and a secured party or its representative and describes property that may then or thereafter serve as collateral. A financing statement neither is nor creates a lien, a security interest or any other type of encumbrance on any property. It does not identify or evidence the existence of a present or future debt or even the existence of a present or future transaction. If there is no security interest, the filed financing statement has no legal effect. Further, a filed financing statement is effective under Division 9 only if there exists authorization in a record authenticated by the debtor. Under Division 9, a filed financing statement provides no constructive notice of any fact. The filing system permits prospective creditors to conduct a search of the filing office public records to ascertain whether there is on file a financing statement that names the debtor, as this may have an impact on the priority that will be enjoyed by the searcher if it in fact provides secured credit to the debtor. Thus, discovery of a filed financing statement serves to warn the searcher that it must make further inquiry. It creates no rights in any property of the debtor.

In addition, it must be recognized that all public records are, and have always been, subject to the possibility of abuse. A wrongdoer may file a specious lawsuit, may record an inappropriate lis pendens, record a forged deed or mortgage in the real property records, etc. No public records system is 100% invulnerable to abuse. The Legislature has recognized this and has provided for criminal penalties as the appropriate balance between deterrence of wrongdoing and the efficient operation, at low cost and with needed speed, of public records that facilitate legitimate transactions. The Division 9 public records are simply another such record, neither the first, nor unique.

The Problem:

From time to time individuals are targeted by unauthorized UCC financing statements that name them as debtors. Often these individuals are public officials.¹ The filings are likely intended to harass them or to affect their credit. They may also be used to attempt to extort money or other property from the named debtors. We refer to these filings as "bogus" filings. In addition, some individuals may file UCC financing statements against themselves, apparently in the belief that they can thereby shelter assets, or at least hinder legitimate creditors from enforcing liens against them. Such statements are sometimes referred to as "strawman" filings.

Neither bogus nor strawman filings have any legal effect. Bogus filings are by definition unauthorized by the debtor, and there is no underlying transaction. Strawman filings do not reflect a third party's claim against a debtor's collateral (the debtor is the same as the secured party). If a priority dispute were to arise based on such filings, once the true nature of the transactions was understood, neither bogus nor strawman filings would affect the rights of legitimate creditors. Moreover, a bogus filing has no legal effect on the rights of the named

¹ Although we have no empirical data to support this assertion, newspaper articles and court filings all seem to reflect filings against public officials such as police officers, judges, prosecutors, and prison officials. Although it is presumably possible for someone to use this same technique to harass a neighbor, or for a disgruntled employee to use the tactic against an employer, it is reasonable to assume that the vast majority of these bogus filings will name a public official as debtor.

debtor.

Accordingly, the filing of a bogus financing statement is not technically the problem, in the sense that it does not give notice of or create any obligation on the part of the named debtor to the named secured party. However, if the named debtor subsequently seeks credit, the fact that a financing statement has been filed naming the debtor and suggesting that there are outstanding loan or other obligations can create substantial problems for the debtor. Many lenders are unwilling to take the time necessary to understand and evaluate the situation – it is easier to simply refuse to make any new credit extensions. As a result, the major problem created by bogus financing statements is that a named debtor may experience a great deal of expense and delay if that debtor is seeking a new credit extension.

Although strawman financing statements may raise similar problems, if they do create a problem for the debtor, it is a problem of the debtor's creation and can be easily solved. There is no reason for anyone to become involved in policing such filings. Indeed, they may be viewed simply as a source of additional revenue for filing offices. There is, however, cause for public concern regarding bogus financing statements.

Existing California Remedies:

California law already includes a number of statutory provisions and common law precedents that can be used to address bogus financing statements:

1. The California Uniform Commercial Code provides procedures for filing correction statements and termination statements to mitigate against the effect of bogus financing statements;
2. The California Uniform Commercial Code also allows an aggrieved party to collect damages resulting from the filing of a bogus financing statement;
3. The California Government Code provides for civil penalties against those who file a lien or encumbrance against a public officer or employee with the intent to harass; this statute should be read to apply to the filing of a bogus financing statement;
4. The California Code of Civil Procedure provides an expedited judicial procedure available to public officers and employees for matters falling within the Government Code;
5. The California Penal Code makes it a felony to file a false instrument; this statute should be read to apply to the filing of a bogus financing statement; and
6. Under common law, the filing of an unauthorized financing statement is actionable as a slander of title; in connection with such a lawsuit, a successful plaintiff may recover injunctive relief, declaratory relief, and monetary damages.

California Uniform Commercial Code Remedies:

Correction Statement: Section 9518(a) of the California Uniform Commercial Code allows a person to file a correction statement under the person's name if that person believes the filing to be inaccurate or wrongly filed. The correction statement allows the aggrieved person to make a narrative comment explaining why the subject financing statement is inaccurate or wrongly filed. A correction statement could be used in response to a bogus financing statement because the bogus financing statement by definition is unauthorized. Although the correction statement does not affect the effectiveness of a filed record, the unauthorized bogus filing is not even legally effective, and the correction statement provides subsequent creditors with the complete picture.

Termination Statement: Section 9513(a) of the California Uniform Commercial Code allows a named debtor to demand that a creditor file a termination statement when, for example: (i) the initial filing was not authorized by the debtor, or (ii) generally, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value. Generally the secured party is required to file a termination statement within 20 days of the date of the demand in respect of commercial goods, or, in respect of consumer goods, within the lesser of 20 days of demand or one month after there is no obligation secured by the collateral covered by the financing statement.

If the secured party fails to respond to the demand for a termination statement, which is likely in respect of a bogus filing, the named debtor is entitled to file a termination statement itself in accordance with Section 9509(d)(2) of the California Uniform Commercial Code.

Civil Damages: Section 9625 of the California Uniform Commercial Code provides that a debtor may recover damages from a secured party who does not comply with the requirements of Division 9. Someone who files a bogus filing would be subject to these damages. An aggrieved person may seek damages in the amount of any loss caused by failure to comply with Division 9, as well as \$500 for (i) each record filed by a person who files a record that the person is not entitled to file under Section 9509 or (ii) each person that fails to comply with Section 9513(a) or (c) regarding termination.

California Government Code and Code of Civil Procedure:

Petition to Strike Lien and Seek Damages: California Government Code Section 6233 provides for a civil penalty to be imposed against any person who knowingly records or files (or directs another to record or file) a false lawsuit, lien, or other encumbrance, including a lis pendens, against a public officer or employee with the intent to harass or to influence or hinder official duties. The lawsuit, lien, or other encumbrance must pertain to actions that arise in the course and scope of the officer's or employee's duties. This statute should be read to apply to bogus financing statements filed against a public officer or employee. The legislative history of the statute reflects a concern with the use of false filings in public records to harass public employees. The impetus for the passage of the legislation was the

growing use of public records by extremist groups.² Such groups maintain websites and provide resources instructing members how to so use public records.³ However, because financing statements are neither lawsuits, nor liens nor encumbrances, a narrow reading of the statute would suggest that it might not apply to bogus financing statements. It is important to note that the statute specifically mentions the filing of a lis pendens, which is a notice of a pending lawsuit. Like a UCC financing statement, a lis pendens is not a lawsuit, lien or encumbrance. Any possible argument that this statute should not apply to UCC financing statements could be readily cured by a simple amendment to California Government Code Section 6233 to add a specific reference to financing statements.

The legislative history of California Government Code Section 6233 refers to a Senate Report on Tactics of Anti-Government Extremists.⁴ That report discussed the growing use of "paper terrorism" to harass public officials.⁵ Although it did not specifically identify UCC financing statements, it did reference filings in the Office of the Secretary of State.⁶ It explained the need for special legislation to help public officials avoid the inconvenience and expense of filing legal proceedings to remove "bogus" liens. All of the problems described in the SOR apply to problems caused by bogus UCC financing statements. It would follow that the section should be construed to apply to such a filing, even if it does not technically constitute a "lien or other encumbrance."

California Code of Civil Procedure Sections 765.010 through 765.060 provide an expedited procedure whereby a public officer or employee whose property is subjected to a lien or encumbrance described in Government Code Section 6223 may petition the superior court ex parte for relief. This statutory procedure does not apply to a lien filed by a financial institution as defined under California law. California Code of Civil Procedure Section 765.050.

² Senate Office of Research, "Tactics of California's Anti-Government Extremists," September 1997 ("SOR Report") (discussing how anti-government extremists are engaging in "paper terrorism" by filing false liens and other encumbrances on the property of government agencies, public officers and employees.)

³ See, e.g., Commercial Liens: A Most Potent Weapon, at <http://www.buildfreedom.com/tl/comliens.shtml> (last visited 6/18/07). (This site does not specifically give instructions for completing a UCC-1; there are references to other sites that charge for providing information – those sites were not visited.)

⁴ SOR Report, supra n. 1.

⁵ The SOR Report noted that the consequences to public officials and public employees against whom these phony lawsuits, liens, or other encumbrances are filed can be quite severe.

"Persons who are unlucky enough to have liens recorded against their properties can find it takes months, and thousands of dollars in attorneys' fees, to clear their title." SOR Report, page 13-14. All California clerks surveyed report receiving frivolous anti-government lawsuits and other bogus filings. SOR Report, page 14.

⁶ SOR Report, supra n. 1 at 10-12.

In response to the petition, the judge can order the secured creditor to make an appearance and show cause why relief should not be granted. The judge is authorized to strike the lien and award damages in an amount up to \$5,000 per violation of Government Code Section 6233 and attorneys' fees.

We refer to this procedure as the "Existing Procedure."

California Penal Code:

Felony: California Penal Code Section 115 makes the knowing procurement or offer of false or forged instruments for filing, registration or recording in any public office in California a felony. Anyone convicted of an offense under this statute is subject to possible imprisonment. In an unpublished opinion, available electronically, a California Court of Appeals has held that California Penal Code Section 115 applies to the filing of bogus financing statements.⁷ In that case, the court reasoned that the core purpose of California Penal Code Section 115 is to protect the integrity and reliability of public records, and that this purpose is served by an interpretation that prohibits any knowing falsification of public records, which would include bogus financing statements.⁸

California common law action for slander of title:

In addition to California's statutory remedies, a person subjected to a bogus financing statement could recover civil damages in tort based on a slander of title claim. The bogus financing statement would be a slander on the person's title to the collateral described in the financing statement.⁹ Possible remedies in such an action would include injunctive relief, declaratory relief, and monetary damages, according to proof.¹⁰

⁷ *People v. Gruber*, 2006 WL 2709616 (5 DCA 2006) (holding, in a case involving a financing statement filed naming a public official as debtor, a UCC-1 financing statement is an "instrument" within the meaning of Penal Code Section 115.). In another decision, a California appellate court reviewed a conviction for violation of Penal Code Section 115 based on the filing of unauthorized financing statements against public officials, to determine whether the defendants were mentally competent. It assumed the applicability of the statute to the bogus financing statement filing. *People v. Jenan*, 148 Cal. App. 4th 1144 (2007).

⁸ Citing (with respect to the purpose of the statute) *People v. Feinberg*, 51 Cal.App. 4th 1566, 1579 (1997).

⁹ California has adopted the definition of slander of title from the Restatement (2d) of Torts, which provides that a person can be held liable for monetary damages suffered as the result of publication of a falsehood that the person knew was false or engaged in reckless disregard of the truth. *Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 857.

¹⁰ Where federal officials are involved, litigation may also be prosecuted under several federal statutes including the Federal False Claims Act. See, for example, *U.S. v. Orrego*, 2004 WL 1447954 (E.D. 2004) (defendants, federal inmates, filed UCC-1's against a U.S. District Court Judge, Assistant U.S. Attorney, and Warden; suit was brought under 28 U.S.C. § 2210-02 (Declaratory Judgment Act), 18 U.S.C. § 1341 (fraud injunction statute), N.Y.U.C.C. § 9-625 and 9-509 (N.Y.U.C.C.statutes), and 31 U.S.C. § 3729 et seq. (False Claims Act).) See also *U.S. v. Greenstreet*, 912 F. Supp. 224 (N.D.Tex.,1996) (United States sued two former borrowers from Farmers Home Administration for declaratory and injunctive relief with respect to "bogus" financing statements filed by borrowers against federal employees.)

Discussion of Proposed Statute:

Summary: The proposed statute contained in the Final Report is somewhat similar to the Existing Procedure but would make the remedy available to all individuals and provide for a different procedure. Unlike the Existing Procedure, the proposed statute does not exclude liens filed by financial institutions. The statute would provide an expedited procedure whereby a person could make a motion to a court for an order to determine that a financing statement is unauthorized. The procedure contemplates a hearing within 20 days of the motion. Discovery is permitted. It is contemplated that a judge would enter an order that the financing statement either is or is not authorized.

The proposed statute includes a civil cause of action for damages for knowingly filing a financing statement without authorization. The proposed statute suggests a minimum of \$10,000 in damages and includes attorneys' fees. The action could be brought by the person named in the bogus financing statement, representatives of that person, or various public attorneys or prosecutors.

The proposed statute also includes criminal penalties for knowingly filing a financing statement without authorization.

Analysis:

In light of the remedies currently available under California law, we conclude that adoption of the proposed statute is unnecessary. It might be prudent to amend Government Code Section 6233 to explicitly state that it applies to financing statements (just as it specifically references a lis pendens). However, the proposed statute both lacks some of the attributes of the Existing Procedure and is overly broad so that it might become a tool for unscrupulous debtors to eliminate legitimate, existing financing statements from the public record and potentially defraud creditors.

Expedited Procedure (Document 2 of Final Report):

Both the expedited procedure contained in the proposed statute and the Existing Procedure provide for quick redress of bogus filings. The proposed statute calls for expunging the bogus financing statement from the record. The Existing Procedure authorizes the judge to "strike the lien." A judge applying California Government Code Section 6233 to a financing statement would thus be authorized to order that the financing statement be removed from the public records.

The Existing Procedure better balances the expectations of legitimate creditors for protection of their liens against the needs of individuals subjected to bogus filings to obtain relief. Legitimate creditors desire an inexpensive and efficient system for providing notice of security interests to third parties. The proposed statute potentially decreases the efficiency and

increases the expense for legitimate creditors to maintain their liens by permitting any individual to bring a summary challenge to a financing statement. The Existing Procedure limits the availability of its summary procedure to public officers and employees, who are the people most likely to be targeted by bogus financing statements. The proposed statute also permits challenges to all financing statements, whereas the Existing Procedure does not permit such a challenge to financing statements filed by financial institutions. The Existing Procedure represents a carefully crafted approach to the problem of bogus filings. The proposed statute would eliminate the carefully-legislated protection given to financial institutions by the California legislature.

The proposed statute opens up its procedure to all individuals, public or private. Allowing private individuals to challenge any financing statement, including one filed by a financial institution, could provide a tool for unscrupulous debtors to challenge legitimate financing statements. For example, an unscrupulous debtor could file a motion to expunge as unauthorized a legitimate financing statement and not send copies of the motion to the secured creditor as required by the statute. As long as a proof of service showing a mailing to the secured creditor at the address shown on the financing statement is filed with the court, the court will assume that the mailing was made and therefore the secured creditor had notice of the hearing. Without any opposition being filed, the court would presumably proceed to grant the motion to expunge the financing statement. Thereafter, a subsequent creditor might extend credit to the dishonest debtor without knowledge of any prior lien and after the inevitable default, one of these two innocent secured parties would have an unavoidable loss.

By including financial institutions in the group of potential bogus filers, the proposed statute creates more problems than it solves. Financial institutions would be subject to increased litigation costs for protecting financing statements that currently are relatively inexpensive to maintain. The Existing Procedure wisely eliminates challenges to financing statements filed by financial institutions because they are unlikely to file bogus filings. If a financial institution has inadvertently filed a financing statement against the wrong person or if a financing statement has expired, that creditor will likely be amenable to the procedure provided under the California Uniform Commercial Code for demanding a termination statement in an effort to avoid being held liable for damages for noncompliance with the California Uniform Commercial Code.

For those debtors who are not public officers or employees, the existing procedures for terminating a financing statement under the California Uniform Commercial Code and the ability to seek damages should be sufficient to provide a remedy without subjecting legitimate creditors to expensive and potentially geographically remote litigation.

The timing and venue provisions contained in the proposed statute would create an undue burden on legitimate creditors to respond to challenges. Regarding timing, the proposed statute may not provide adequate time for a legitimate secured creditor to receive the notice of the motion, review its file, obtain counsel, and respond to the claim. The venue provision also would require a secured creditor to respond to the motion where the claim is brought. Most debtors would likely file in the county in which they reside. This would add a

travel expense for legitimate creditors that they currently do not face. This would be particularly burdensome for small creditors with limited resources. Such creditors may be faced with the choice of defending the claim or surrendering their lien due to the burden of defending it.

The expedited procedure in the proposed statute adds an administrative burden to the record keeping requirements for the Secretary of State's UCC Division because it requires adding additional categories to existing systems. For example, the proposed statute requires that the UCC Division maintain information about the record related to a bogus filing and make sure it is searchable by number, but the UCC Division is required to withhold it from routine searches and data purchases.

Criminal Penalty (Document 3 of Final Report) and Civil Penalty and Injunction (Document 4 of Final Report):

The criminal remedy contained in Document 3 of the Final Report and the civil remedy contained in Document 4 largely duplicate the existing remedies provided under the existing California Penal Code, California Uniform Commercial Code, and the Existing Procedure. Similar to the proposed statute contained in the Final Report, the California Penal Code should be read to make the knowing filing of a bogus financing statement a crime. The California Uniform Commercial Code and the Existing Procedure make civil damages available to a person damaged by another's violation of the California Uniform Commercial Code, or for violation of the California Government Code, respectively, which is similar to the civil remedy contained in the proposed statute.

Conclusion:

California currently has adequate and proportionate procedures in place to address the problem of bogus filings. The California Uniform Commercial Code provides the opportunity to file correction statements and termination statements to clarify the record. It also makes civil damages available to people who are injured by violations of the California Uniform Commercial Code. Civil damages may also be available under tort law. The California Penal Code prohibits people from knowingly filing unauthorized financing statements. The Existing Procedure was carefully crafted to provide public officers and employees protection from bogus liens. By excluding filings by financial institutions, it balances the need for a quick remedy for those most likely to be targeted by bogus financing statements with the needs of legitimate creditors for an efficient, inexpensive registry for liens. In closing, we point out that, as drafted, the proposed statute contained in the Final Report is not integrated into California's statutory scheme, whereas the Existing Procedure already is. As a result, before adoption, the proposed statute would need to be thoroughly vetted and revised to integrate it into California's existing statutory scheme. For example, the timing requirements of the proposed statute would need revision to conform to notice timing requirements under the California Civil Code of Procedure. The expedited procedure is characterized as a motion, which under California procedural rules may only be made in a pending action. Instead the motion should be classified as a petition. The proposed statute states that discovery is permitted but does not establish a framework for undertaking it or refer to California's existing rules.

The drafters of Revised Article 9 in their Official Comment 3 to UCC 9-518 suggested that a summary judicial procedure for correcting the public record and criminal penalties for those who misuse the filing and recording systems may be called for. California provides just these remedies through the procedures contained in its Uniform Commercial Code, the Existing Procedure, and the Penal Code. We suggest that no action be taken on the proposals contained in the Final Report. If additional legislation is needed, we believe that a better approach would be to make modest clarifying amendments to the Existing Procedure.

Very truly yours,

A handwritten signature in black ink, appearing to read "Barry A. Dubin", written in a cursive style.

Barry A. Dubin

BAD:jd

Attachments: Appendix I
Appendix II

cc: James S. Cochran, Esq.
Vasco H. Morais, Esq.
Harry C. Sigman, Esq.
Pauline M. Stevens, Esq.

563041.4

APPENDIX I
STATUTES RELATED TO UCC REMEDIES

California Uniform Commercial Code Section 9509. Persons entitled to file a record

(a) A person may file an initial financing statement, an amendment that adds collateral covered by a financing statement, or an amendment that adds a debtor to a financing statement only if either of the following conditions is satisfied:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subdivision (b) or (c).

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering both of the following:

(1) The collateral described in the security agreement.

(2) Property that becomes collateral under paragraph (2) of subdivision (a) of Section 9315, whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under paragraph (1) of subdivision (a) of Section 9315, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under paragraph (2) of subdivision (a) of Section 9315.

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if either of the following conditions is satisfied:

(1) The secured party of record authorizes the filing.

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by subdivision (a) or (c) of Section 9513, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subdivision (d).

California Uniform Commercial Code Section 9513. Termination of a statement

(a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and either of the following conditions is satisfied:

- (1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.
 - (2) The debtor did not authorize the filing of the initial financing statement.
- (b) To comply with subdivision (a), a secured party shall cause the secured party of record to file the termination statement in accordance with either of the following rules:
- (1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.
 - (2) If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.
- (c) In cases not governed by subdivision (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if any of the following conditions is satisfied:
- (1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.
 - (2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation.
 - (3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession.
 - (4) The debtor did not authorize the filing of the initial financing statement.
- (d) Except as otherwise provided in Section 9510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 9510, for purposes of subdivision (g) of Section 9519, subdivision (a) of Section 9522, and subdivision (c) of Section 9523, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

California Uniform Commercial Code Section 9518. Claim concerning inaccurate or wrongfully filed record

- (a) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) A correction statement must do all of the following:

(1) Identify the record to which it relates by both of the following:

(A) The file number assigned to the initial financing statement to which the record relates.

(B) If the correction statement relates to a record filed or recorded in a filing office described in paragraph (1) of subdivision (a) of Section 9501, the date that the initial financing statement was filed or recorded and the information specified in subdivision (b) of Section 9502.

(2) Indicate that it is a correction statement.

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

California Uniform Commercial Code Section 9625. Remedies for secured party's failure to comply with article

(a) If it is established that a secured party is not proceeding in accordance with this division, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subdivisions (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this division. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in Section 9628, a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subdivision (b) for its loss.

(d) A debtor whose deficiency is eliminated under Section 9626 may recover damages for the loss of any surplus. However, in a transaction other than a consumer transaction, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9626 may not otherwise recover under subdivision (b) for noncompliance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subdivision (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from any of the following persons:

(1) A person that fails to comply with Section 9208.

(2) A person that fails to comply with Section 9209.

- (3) A person that files a record that the person is not entitled to file under subdivision (a) of Section 9509.
- (4) A person that fails to cause the secured party of record to file or send a termination statement as required by subdivision (a) or (c) of Section 9513.
- (5) A person that fails to comply with paragraph (1) of subdivision (b) of Section 9616 and whose failure is part of a pattern, or consistent with a practice, of noncompliance.
- (6) A person that fails to comply with paragraph (2) of subdivision (b) of Section 9616.
- (f) A debtor or consumer obligor may recover damages under subdivision (b) and, in addition, five hundred dollars (\$500) in each case from a person that, without reasonable cause, fails to comply with a request under Section 9210. A recipient of a request under Section 9210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subdivision.
- (g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

APPENDIX II

STATUTES RELATED TO NON UCC REMEDIES

Government Code Section 6223. Actions arising in the course and scope of public officer's or employee's duties; lawsuits, liens or other encumbrances.

(a) No person shall file or record a lawsuit, lien or other encumbrance, including, but not limited to, a notice of lis pendens, against a public officer or employee, knowing it is false, with the intent to harass the officer or employee or to influence or hinder the public officer or employee in discharging his or her official duties.

(b) This section shall apply only to lawsuits, liens or other encumbrances pertaining to actions that arise in the course and scope of the public officer's or employee's duties.

(c) Any person who knowingly records or files, or directs another to record or file, a lawsuit, lien or encumbrance in violation of subsection (a) shall be liable to the person subject to the lawsuit, or the owner of the property bound by the lien or other encumbrances for a civil penalty not to exceed five thousand dollars (\$5,000).

Code of Civil Procedure Sections 765.010-765.060

765.010. A public officer or employee whose property is subject to a lien or other encumbrance in violation of Section 6223 of the Government Code may petition the superior court of the county in which the person resides or in which the property is located for an order, which may be granted ex parte, directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief provided by this article should not be granted. The court shall schedule the hearing no earlier than 14 days after the date of the order. The scheduled date of the hearing shall allow adequate time for notice of the hearing.

765.020. A petition under this article shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner's attorney setting forth a concise statement of the facts upon which the motion is based. The petition and affidavit shall be in substantially the form prescribed by the Judicial Council.

765.030. If the court determines that the lien or other encumbrance is in violation of Section 6223 of the Government Code, the court shall issue an order striking and releasing the lien or other encumbrance and may award costs and reasonable attorney fees to the petitioner to be paid by the lien or other encumbrance claimant. If the court determines that the lien or other encumbrance is valid, the court shall issue an order so stating and may award costs and reasonable attorney fees to the encumbrance claimant to be paid by the petitioner. The court may direct that such an order shall be recorded.

765.040. Any lien or encumbrance claimant who records or files, or directs another to record or file, a lien or other encumbrance in violation of Section 6223 of the Government Code shall be liable to the owner of the property bound by the lien or other encumbrance for a civil penalty of up to five thousand dollars (\$5,000).

765.050. This article does not apply to a document which acts as a claim of encumbrance by a financial institution, as defined in subdivision (a) of Section 14161 of the Penal Code or Section 481.113 of this code, or a public entity, as defined in Section 481.200 of this code.

765.060. If a lien or other encumbrance is recorded or filed in violation of Section 6223 of the Government Code, the state or local agency that employs the public officer or employee may provide counsel for the public officer or employee in an action brought pursuant to Section 765.010.

Penal Code Section 115. Procuring or offering false or forged instrument for record; violations; punishment

(a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

(b) Each instrument which is procured or offered to be filed, registered, or recorded in violation of subdivision (a) shall constitute a separate violation of this section.

(c) Except in unusual cases where the interests of justice would best be served if probation is granted, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person with a prior conviction under this section who is again convicted of a violation of this section in a separate proceeding.

(2) Any person who is convicted of more than one violation of this section in a single proceeding, with intent to defraud another, and where the violations resulted in a cumulative financial loss exceeding one hundred thousand dollars (\$100,000).

(d) For purposes of prosecution under this section, each act of procurement or of offering a false or forged instrument to be filed, registered, or recorded shall be considered a separately punishable offense.

Restatement (2d) of Torts § 623A. Liability For Publication Of Injurious Falsehood

One who publishes a false statement harmful to the interests of another is subject to liability for pecuniary loss resulting to the other if:

(a) he intends for publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and

(b) he knows that the statement is false or acts in reckless disregard of its truth or falsity.